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14
15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 DANIEL S. EARLE,
18 Plaintiff,
19 v.
20 SETERUS, INC.,
21 Defendant.

Case No. 2:18-cv-06959-SVW (SKx)
STIPULATED PROTECTIVE ORDER
[Discovery Document: Referred to
Magistrate Judge Steve Kim]

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action may involve the production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
6 enter the following Stipulated Protective Order. The parties acknowledge that this
7 Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles. The parties further acknowledge, as set forth
11 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
12 file confidential information under seal; Civil Local Rule 79-5 sets forth the
13 procedures that must be followed and the standards that will be applied when a
14 party seeks permission from the court to file material under seal.

15 B. GOOD CAUSE STATEMENT

16 This action may involve trade secrets, private consumer information,
17 customer and pricing lists and other valuable research, development, commercial,
18 financial, technical and/or proprietary information for which special protection
19 from public disclosure and from use for any purpose other than prosecution of this
20 action may be warranted. Such confidential and proprietary materials and
21 information consist of, among other things, private consumer information,
22 confidential business or financial information, information regarding confidential
23 business practices, or other confidential research, development, or commercial
24 information (including information implicating privacy rights of third parties),
25 information otherwise generally unavailable to the public, or which may be
26 privileged or otherwise protected from disclosure under state or federal statutes,
27 court rules, case decisions, or common law. Accordingly, to expedite the flow of
28 information, to facilitate the prompt resolution of disputes over confidentiality of

1 discovery materials, to adequately protect information the parties are entitled to
2 keep confidential, to ensure that the parties are permitted reasonable necessary uses
3 of such material in preparation for and in the conduct of trial, to address their
4 handling at the end of the litigation, and serve the ends of justice, a protective order
5 for such information is justified in this matter. It is the intent of the parties that
6 information will not be designated as confidential for tactical reasons and that
7 nothing be so designated without a good faith belief that it has been maintained in a
8 confidential, non-public manner, and there is good cause why it should not be part
9 of the public record of this case.

10 2. DEFINITIONS

11 2.1 Action: this pending federal law suit captioned above as *Daniel Earle v.*
12 *Seterus, Inc.*, Case No. 2:18-cv-06959-SVW (SKx) (C.D. Cal. 2018).

13 2.2 Challenging Party: a Party or Non-Party that challenges the designation
14 of information or items under this Order.

15 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
16 how it is generated, stored or maintained) or tangible things that qualify for
17 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
18 the Good Cause Statement.

19 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
20 support staff).

21 2.5 Designating Party: a Party or Non-Party that designates information or
22 items that it produces in disclosures or in responses to discovery as
23 “CONFIDENTIAL.”

24 2.6 Disclosure or Discovery Material: all items or information, regardless of
25 the medium or manner in which it is generated, stored, or maintained (including,
26 among other things, testimony, transcripts, and tangible things), that are produced
27 or generated in disclosures or responses to discovery in this matter.
28

1 2.7 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as
3 an expert witness or as a consultant in this Action.

4 2.8 House Counsel: attorneys who are employees of a party to this Action.
5 House Counsel does not include Outside Counsel of Record or any other outside
6 counsel.

7 2.9 Non-Party: any natural person, partnership, corporation, association, or
8 other legal entity not named as a Party to this action.

9 2.10 Outside Counsel of Record: attorneys who are not employees of a party
10 to this Action but are retained to represent or advise a party to this Action and have
11 appeared in this Action on behalf of that party or are affiliated with a law firm
12 which has appeared on behalf of that party, and includes support staff.

13 2.11 Party: any party to this Action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and their
15 support staffs).

16 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
17 Discovery Material in this Action.

18 2.13 Professional Vendors: persons or entities that provide litigation support
19 services (e.g., photocopying, videotaping, translating, preparing exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or medium)
21 and their employees and subcontractors.

22 2.14 Protected Material: any Disclosure or Discovery Material that is
23 designated as "CONFIDENTIAL."

24 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
25 from a Producing Party.

26 3. SCOPE

27 The protections conferred by this Stipulation and Order cover not only
28 Protected Material (as defined above), but also (1) any information copied or

1 extracted from Protected Material; (2) all copies, excerpts, summaries, or
2 compilations of Protected Material; and (3) any testimony, conversations, or
3 presentations by Parties or their Counsel that might reveal Protected Material.

4 Any use of Protected Material at trial shall be governed by the orders of the
5 trial judge. This Order does not govern the use of Protected Material at trial.

6 4. DURATION

7 Even after final disposition of this litigation, the confidentiality obligations
8 imposed by this Order shall remain in effect until a Designating Party agrees
9 otherwise in writing or a court order otherwise directs. Final disposition shall be
10 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
11 with or without prejudice; and (2) final judgment herein after the completion and
12 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
13 including the time limits for filing any motions or applications for extension of time
14 pursuant to applicable law.

15 5. DESIGNATING PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for Protection.

17 Each Party or Non-Party that designates information or items for protection under
18 this Order must take care to limit any such designation to specific material that
19 qualifies under the appropriate standards. The Designating Party must designate for
20 protection only those parts of material, documents, items, or oral or written
21 communications that qualify so that other portions of the material, documents,
22 items, or communications for which protection is not warranted are not swept
23 unjustifiably within the ambit of this Order.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations
25 that are shown to be clearly unjustified or that have been made for an improper
26 purpose (e.g., to unnecessarily encumber the case development process or to
27 impose unnecessary expenses and burdens on other parties) may expose the
28 Designating Party to sanctions.

1 If it comes to a Designating Party's attention that information or items that it
2 designated for protection do not qualify for protection, that Designating Party must
3 promptly notify all other Parties that it is withdrawing the inapplicable designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this
5 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
6 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
7 under this Order must be clearly so designated before the material is disclosed or
8 produced.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (e.g., paper or electronic
11 documents, but excluding transcripts of depositions or other pretrial or trial
12 proceedings), that the Producing Party affix at a minimum, the legend
13 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
14 contains protected material. If only a portion or portions of the material on a page
15 qualifies for protection, the Producing Party also must clearly identify the protected
16 portion(s) (e.g., by making appropriate markings in the margins).

17 A Party or Non-Party that makes original documents available for
18 inspection need not designate them for protection until after the inspecting Party
19 has indicated which documents it would like copied and produced. During the
20 inspection and before the designation, all of the material made available for
21 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
22 identified the documents it wants copied and produced, the Producing Party must
23 determine which documents, or portions thereof, qualify for protection under this
24 Order. Then, before producing the specified documents, the Producing Party must
25 affix the "CONFIDENTIAL legend" to each page that contains Protected Material.
26 If only a portion or portions of the material on a page qualifies for protection, the
27 Producing Party also must clearly identify the protected portion(s) (e.g., by making
28 appropriate markings in the margins).

1 (b) for testimony given in depositions that the Designating Party
2 identify the Disclosure or Discovery Material on the record, before the close of the
3 deposition all protected testimony.

4 (c) for information produced in some form other than documentary
5 and for any other tangible items, that the Producing Party affix in a prominent
6 place on the exterior of the container or containers in which the information is
7 stored the legend "CONFIDENTIAL." If only a portion or portions of the
8 information warrants protection, the Producing Party, to the extent practicable,
9 shall identify the protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
11 failure to designate qualified information or items does not, standing alone, waive
12 the Designating Party's right to secure protection under this Order for such
13 material. Upon timely correction of a designation, the Receiving Party must make
14 reasonable efforts to assure that the material is treated in accordance with the
15 provisions of this Order.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
18 designation of confidentiality at any time that is consistent with the Court's
19 Scheduling Order.

20 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
21 resolution process under Local Rule 37.1 *et seq.*

22 6.3 The burden of persuasion in any such challenge proceeding shall be on
23 the Designating Party. Frivolous challenges, and those made for an improper
24 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
25 parties) may expose the Challenging Party to sanctions. Unless the Designating
26 Party has waived or withdrawn the confidentiality designation, all parties shall
27 continue to afford the material in question the level of protection to which it is
28

entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

1 (f) professional jury or trial consultants, mock jurors, and Professional
2 Vendors to whom disclosure is reasonably necessary for this Action and who
3 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
4 A);

5 (g) the author or recipient of a document containing the information or
6 a custodian or other person who otherwise possessed or knew the
7 information;

8 (h) during their depositions, witnesses, and attorneys for witnesses, in
9 the Action to whom disclosure is reasonably necessary provided: (1) the
10 deposing party requests that the witness sign the form attached as Exhibit 1
11 hereto; and (2) they will not be permitted to keep any confidential
12 information unless they sign the “Acknowledgment and Agreement to Be
13 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
14 ordered by the court. Pages of transcribed deposition testimony or exhibits to
15 depositions that reveal Protected Material may be separately bound by the
16 court reporter and may not be disclosed to anyone except as permitted under
17 this Stipulated Protective Order; and

18 (i) any mediator or settlement officer, and their supporting personnel,
19 mutually agreed upon by any of the parties engaged in settlement
20 discussions.

21 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
22 IN OTHER LITIGATION

23 If a Party is served with a subpoena or a court order issued in other litigation
24 that compels disclosure of any information or items designated in this Action as
25 “CONFIDENTIAL,” that Party must:

26 (a) promptly notify in writing the Designating Party. Such notification shall
27 include a copy of the subpoena or court order;
28

1 (b) promptly notify in writing the party who caused the subpoena or order to
2 issue in the other litigation that some or all of the material covered by the subpoena
3 or order is subject to this Protective Order. Such notification shall include a copy of
4 this Stipulated Protective Order; and

5 (c) cooperate with respect to all reasonable procedures sought to be pursued
6 by the Designating Party whose Protected Material may be affected.

7 If the Designating Party timely seeks a protective order, the Party served with
8 the subpoena or court order shall not produce any information designated in this
9 action as “CONFIDENTIAL” before a determination by the court from which the
10 subpoena or order issued, unless the Party has obtained the Designating Party’s
11 permission. The Designating Party shall bear the burden and expense of seeking
12 protection in that court of its confidential material and nothing in these provisions
13 should be construed as authorizing or encouraging a Receiving Party in this Action
14 to disobey a lawful directive from another court.

15 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
16 PRODUCED IN THIS LITIGATION

17 (a) The terms of this Order are applicable to information produced by a Non-
18 Party in this Action and designated as “CONFIDENTIAL.” Such information
19 produced by Non-Parties in connection with this litigation is protected by the
20 remedies and relief provided by this Order. Nothing in these provisions should be
21 construed as prohibiting a Non-Party from seeking additional protections.

22 (b) In the event that a Party is required, by a valid discovery request, to
23 produce a Non-Party’s confidential information in its possession, and the Party is
24 subject to an agreement with the Non-Party not to produce the Non-Party’s
25 confidential information, then the Party shall:

26 (1) promptly notify in writing the Requesting Party and the Non-Party
27 that some or all of the information requested is subject to a confidentiality
28 agreement with a Non-Party;

1 (2) promptly provide the Non-Party with a copy of the Stipulated
2 Protective Order in this Action, the relevant discovery request(s), and a
3 reasonably specific description of the information requested; and

4 (3) make the information requested available for inspection by the
5 Non-Party, if requested.

6 (c) If the Non-Party fails to seek a protective order from this court within 14
7 days of receiving the notice and accompanying information, the Receiving Party
8 may produce the Non-Party's confidential information responsive to the discovery
9 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
10 not produce any information in its possession or control that is subject to the
11 confidentiality agreement with the Non-Party before a determination by the court.
12 Absent a court order to the contrary, the Non-Party shall bear the burden and
13 expense of seeking protection in this court of its Protected Material.

14 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
16 Protected Material to any person or in any circumstance not authorized under this
17 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
18 writing the Designating Party of the unauthorized disclosures, (b) use its best
19 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
20 person or persons to whom unauthorized disclosures were made of all the terms of
21 this Order, and (d) request such person or persons to execute the "Acknowledgment
22 and Agreement to Be Bound" that is attached hereto as Exhibit A.

23 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
24 PROTECTED MATERIAL

25 When a Producing Party gives notice to Receiving Parties that certain
26 inadvertently produced material is subject to a claim of privilege or other
27 protection, the obligations of the Receiving Parties are those set forth in Federal
28 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify

1 whatever procedure may be established in an e-discovery order that provides for
2 production without prior privilege review. Pursuant to Federal Rule of Evidence
3 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
4 of a communication or information covered by the attorney-client privilege or work
5 product protection, the parties may incorporate their agreement in the stipulated
6 protective order submitted to the court.

7 12. MISCELLANEOUS

8 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
9 person to seek its modification by the Court in the future.

10 12.2 Right to Assert Other Objections. By stipulating to the entry of this
11 Protective Order no Party waives any right it otherwise would have to object to
12 disclosing or producing any information or item on any ground not addressed in
13 this Stipulated Protective Order. Similarly, no Party waives any right to object on
14 any ground to use in evidence of any of the material covered by this Protective
15 Order.

16 12.3 Filing Protected Material. A Party that seeks to file under seal any
17 Protected Material must comply with Civil Local Rule 79-5. Protected Material
18 may only be filed under seal pursuant to a court order authorizing the sealing of the
19 specific Protected Material at issue. If a Party's request to file Protected Material
20 under seal is denied by the court, then the Receiving Party may file the information
21 in the public record unless otherwise instructed by the court.

22 13. FINAL DISPOSITION

23 After the final disposition of this Action, as defined in paragraph 4, within 60
24 days of a written request by the Designating Party, each Receiving Party must
25 return all Protected Material to the Producing Party or destroy such material. As
26 used in this subdivision, "all Protected Material" includes all copies, abstracts,
27 compilations, summaries, and any other format reproducing or capturing any of the
28 Protected Material. Whether the Protected Material is returned or destroyed, the

1 Receiving Party must submit a written certification to the Producing Party (and, if
2 not the same person or entity, to the Designating Party) by the 60 day deadline that
3 (1) identifies (by category, where appropriate) all the Protected Material that was
4 returned or destroyed and (2) affirms that the Receiving Party has not retained any
5 copies, abstracts, compilations, summaries or any other format reproducing or
6 capturing any of the Protected Material. Notwithstanding this provision, Counsel
7 are entitled to retain an archival copy of all pleadings, motion papers, trial,
8 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
9 and trial exhibits, expert reports, attorney work product, and consultant and expert
10 work product, even if such materials contain Protected Material. Any such archival
11 copies that contain or constitute Protected Material remain subject to this Protective
12 Order as set forth in Section 4 (DURATION).

13 14. Any violation of this Order may be punished by any and all appropriate
14 measures including, without limitation, contempt proceedings and/or monetary
15 sanctions.

16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17
18 Dated: December 5, 2018

By: /s/ Trinette G. Kent

TRINETTE G. KENT
Attorneys for Plaintiff DANIEL S. EARLE

19
20 Dated: December 5, 2018

LARSON O'BRIEN LLP

21
22 By: /s/ Paul A. Rigali

STEPHEN G. LARSON¹
PAUL A. RIGALI
LAUREN S. WULFE
EMILIE ZUCCOLOTTO
Attorneys for Defendant SETERUS, INC.

23
24
25
26 _____
27 ¹ Pursuant to Local Rule 5-4.3.4(a)(2)(i), signatory hereby does attest that all
28 signatories listed, and on whose behalf the filing is submitted, concur in the filing's
content and have authorized the filing.

1 Dated: December 5, 2018

MAURICE WUTSCHER LLP

2
3 By: /s/ Eric Tsai

ERIC TSAI

4 Attorneys for Defendant SETERUS, INC.

5
6
7 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

8 DATED: December 6, 2018

9
10 

11
12 HONORABLE STEVE KIM

13 UNITED STATES MAGISTRATE JUDGE

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District of California
7 on [date] in the case of *Daniel Earle v. Seterus, Inc.*, Case No. 2:18-cv-06959-
8 SVW (SKx) (C.D. Cal. 2018). I agree to comply with and to be bound by all the
9 terms of this Stipulated Protective Order and I understand and acknowledge that
10 failure to so comply could expose me to sanctions and punishment in the nature of
11 contempt. I solemnly promise that I will not disclose in any manner any
12 information or item that is subject to this Stipulated Protective Order to any person
13 or entity except in strict compliance with the provisions of this Order. I further
14 agree to submit to the jurisdiction of the United States District Court for the Central
15 District of California for the purpose of enforcing the terms of this Stipulated
16 Protective Order, even if such enforcement proceedings occur after termination of
17 this action. I hereby appoint _____ [print or type full
18 name] of _____ [print or type full
19 address and telephone number] as my California agent for service of process in
20 connection with this action or any proceedings related to enforcement of this
21 Stipulated Protective Order.

22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____

25 Signature: _____